Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Request for Review of Decision of Universal	)	
Service Administrator by Corr Wireless	)	
Communications, LLC	)	

COMMENTS OF
MTPCS, LLC D/B/A CELLULAR ONE

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<u>MTPCS, LLC D/B/A CELLULAR ONE</u>

MTPCS, LLC d/b/a Cellular One and its affiliates (collectively, "MTPCS") hereby submit comments in response to the Notice of Proposed Rule Making *("Notice")* in the above-captioned dockets. MTPCS is a facilities-based wireless carrier formed in 2005, which through diligent construction and coverage now, with its affiliates, provides switched wireless GSM voice and data communications services, including cellular, PCS and satellite services, on its networks to more than 160,000 customers in rural Montana, Wyoming, Texas, Oklahoma, Louisiana, and the Gulf of Mexico. GSM is the most widely adopted wireless standard in the world, with more than 4 billion connections, in more than 219 countries, worldwide.[1]

MTPCS uses universal service support to build cell sites and provide wireless services to businesses, private citizens, government workers, public safety and emergency services personnel who otherwise would have little or no access to telecommunications, in rural portions

[1] / Source: GSMA (the GSM Association): Market Data Summary (Q2 2009), http://www.gsmworld.com/newsroom/market-data/market_data_summary.htm ; http://www.gsmworld.com/about-us/index.htm .

of Montana and, through an affiliate, in Oklahoma RSA No. 5. An MTPCS affiliate also was designated recently as a competitive eligible telecommunications carrier (ETC) in Louisiana.

MTPCS complies with strong customer service regulations and carrier of last resort obligations, including in areas where it is eligible for support, and provides Lifeline and Link Up service to low income customers. It is also subject to Montana requirements that competitive ETCs must construct, within five years of designation, service coverage available to 98% of the population of that sparsely populated, large, mountainous state.

I. Executive Summary.

The Commission should not intentionally reduce competitive service to rural areas. In accordance with the Small Business Act, the Commission should not harm the interests of small business concerns and the customers who seek their services. *Yet the Regulatory Flexibility Analysis, as discussed herein, states that the proposed changes would do just that.* Indeed, the proposals seem designed to reduce sufficient support to CETCs. Curtailing support to CETCs is certain to curtail CETC deployment, even in areas where the CETC is the only carrier providing service, or with the reach to serve the needs of rural residents, such as emergency service providers, roadside paramedics, or students walking or biking long distances to school.

The interim cap rule should not be amended so that a state's interim cap amount would be adjusted if a competitive ETC serving the state relinquishes its ETC status. As noted in Appendix C of the *Notice:*[2]

> Under certain circumstances, this may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the Order, the reduction in size of a state interim cap amount could negatively affect a

[2] / *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, d Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010) ("*Corr Wireless Notice*" or "*Notice*"), *recon. pending*, at Appendix C (*"Reg. Flex. Analysis"*) ¶ 30.

competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount.

The reduction in CETC support under the cap has logically limited the effectiveness of companies in their efforts to meet the goals of the universal service provisions of the Act. The proposed changes would exacerbate this situation. Moreover, in violation of the Small Business Act, the Commission failed to consider significant alternatives to the proposals that can minimize the significant economic impact of the proposed rules on small entities.

In addition, the Commission should not make permanent any waiver of section 54.709(b) or otherwise enable itself to direct USAC to reserve reclaimed funds. Sufficient CETC funding is critically needed, for FCC compliance with the sufficiency principle of the Act, and also to meet state requirements that CETCs engage in significant and costly buildout to serve the valid needs of rural citizens who still lack even basic service in some areas.[3] Saving funds for broadband, while an understandable goal, should not be accomplished at the expense of persons

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[3] / *See* Testimony of Bill Wade, General Manager, Mid-Rivers Wireless, available at http://data.opi.mt.gov/bills/2009/Minutes/House/Exhibits/tah22a06.pdf (emphasis supplied) ("In the most rural areas of Montana, however, we have a long way to go toward making sure the public safety and other benefits of excellent wireless phone coverage are available everywhere in the State. Mid-Rivers Wireless operates primarily as a "fill-in" licensee, meaning that we are granted wireless licenses by the Federal Government because **we are agreeing to provide coverage where NO wireless signal is currently available.** … Carriers like Mid-Rivers Wireless and Nemont are now **tasked with meeting Public Service Commission build-out schedules that were <u>based on a funding source that is no longer available at levels originally anticipated</u>** …. **Montana's rural wireless providers need support and incentives to build**…").

*See also, e.g.,*Letter submitted by the Montana Rural Education Association, in support of state measure to reform taxation of cell phone assets in Montana, http://data.opi.mt.gov/bills/2009/Minutes/House/Exhibits/tah22a07.pdf (January 29, 2009) (emphasis supplied) (in light of "the new cell phone equipment and service across much of rural Montana that this legislation would encourage and foster. Members of the House Taxation Committee should be aware that **in representing rural schools and the children and communities we serve in areas of vast distance across our state, MREA considers this issue *<u>critical and rising to the level of a safety issue</u>* for many of our constituents**.").

who could lose even basic communications services.[4] The broadband goal should not take the place of the goal set forth in Section 254 of the Act, of ensuring that at least basic coverage is made available to citizens in rural and insular areas.

Failure to spend funds needed for service to high cost areas today would prevent deployment and maintenance of the infrastructure needed for broadband tomorrow, thus further delaying the deployment of broadband. As the amount of funding available in the universal service pool today has proven insufficient to ensure coverage everywhere, and in fact construction of such coverage is at risk of escalating retreat as a result of this proceeding, keeping funding at current levels cannot suffice to ensure both basic *and* broadband service. Providing insufficient funding for basic universal service to designated areas, regardless of whether the service is provided by an older or newer ETC, even if the goal is to hold the basic service funds in reserve for future broadband use, is contrary to the principles set forth in the Act and the needs of rural populations.

Thanks to portability of support among CETCs, universal service among wireless CETCs is not duplicative. Support follows each individual customer. Moreover, wireless carriers contribute disproportionately to the high-cost fund, adding more than they take out; as CETCs, they should not be targeted for support reduction; this would violate the sufficiency requirements of the Act and the Commission's principles of competitive neutrality.

II. The Commission Should Not Intentionally Reduce Competitive Service to Rural Areas. In Accordance With The Small Business Act, The Commission Should Not Harm the Interests of Small Business Concerns And The Customers Who Seek Their Services.

As correctly noted by Commissioner Copps in his Statement regarding the instant item:

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[4] / *See id.*

"Contrary to the strictures of the Telecommunications Act, the cap was not technology-neutral, and it had the perhaps unintended effect of hindering the deployment of wireless voice service to areas of the United States that need it most."

As a direct result of the cap on support to competitive service, numerous residents of rural states have not yet been reached by twenty-first century communications, and the jobs of construction crews on cell sites have been curtailed or eliminated. [5]

According to analysis appended to the item at issue, "***the purpose of the proposed rule is to reduce the amount of high-cost universal service support received by competitive ETCs***."[6]

Yet in many areas, competitive service – provided by CETCs – is the only service that can be received by rural residents. [7] Non-competitive carriers simply do not cover all areas of the country. Maps of competitive coverage examined at the Commission should indicate where CETC lines or signals cross counties or service areas – rather than showing those entire areas as served. Even in the buildings that are served, the inside premises that are the only locations

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5 / Because the cap was set at levels retroactive to two months before it was adopted, and five months before it became effective, it had the effect of unfairly reducing support to CETCs in some states. In Montana, due to the increase in supported competitive lines subsequent to March 2008, the effect was dramatic. *See* Testimony of Shawn Hanson, General Manager, Sagebrush Cellular, Inc. dba Nemont Wireless, http://data.opi.mt.gov/bills/2009/Minutes/House/Exhibits/tah22a04.pdf (*"Hanson Testimony")* (as part of the Montana designation process, "***Sagebrush committed to build-out plans for improving coverage to reach 98% of subscriber locations within its serving areas within 5 years***. … In addition [to a tax increase at the state level] **… the FUSF that Sagebrush had been receiving was *significantly reduced* as the result of an FCC order capping FUSF at a state level**. ***These two significant impacts on Sagebrush are squeezing its ability to continue with its build-out plans to improve coverage and service."****)*

As evidence of this decreased ability to build out, note that after the cap was adopted, Sagebrush filed at the Montana PSC a request, in Docket No. D2004.1.7, for an extension of time within which to complete its 98% coverage build out. The request was granted, MPSC Order No. 6687b (September 3, 2009).

6 / Initial Regulatory Flexibility Analysis, *Notice* Appendix C, at ¶ 30 (*Reg. Flex. Analysis).*

7 / *See Wade Testimony, supra n.3.*

reached by most landlines; there are many areas yet to be reached at all with competitive service, to the detriment of consumers.[8]

Retrieving competitive carrier support and banking it for future uses, thereby keeping an even tighter lid on the ***already-reduced*** per-line support for customers of competitive carriers,[9] ***would encourage cost-necessitated rollback of competitive telecommunications coverage in rural areas.***[10] ***This would slow broadband deployment, as well. The existing CETC infrastructure in high cost areas will continue to require funding for engineering services and maintenance, in order to remain useful for broadband deployments.*** CETC coverage often constitutes the only actual local telecommunications option in rural areas, and different CETCs serve different business and personal communications needs. A competitive marketplace does *not* result in duplicative support where support is portable, as it is with CETCs; instead, it works to the benefit of the public.

The proposed policy not only would injure only the public, at the expense of the Commission's own competitive neutrality principle, but also would do a disservice to the increasing numbers of consumers who desire wireless and other CETC technologies or coverage areas. We urge the Commission to permit "breathing room" under the cap in order that per-customer support may rise back to the level that would have been applicable at the time the cap was adopted (retroactive to August 2008 levels, not March 2008).

Adoption of The Proposals Would Violate The Small Business Act and the Still Valid Provisions of Section 254 of the Telecommunications Act.

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8 / *Id.*

9 / *See Hanson Testimony, supra.*

10 / *See id.*

The United States Congress has stated:

> ***It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise,*** to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, ***and to maintain and strengthen the overall economy of the Nation.***

15 U.S.C. § 631(a) (emphasis supplied).

As a small business wireless carrier according to the Wireless Telecommunications Carriers size standards of the Small Business Administration,[11] and as a CETC entitled to support under the universal service provisions of the Telecommunications Act, MTPCS finds it unusually important to flag aspects of the Initial Regulatory Flexibility analysis for attention.

As noted in the Reg. Flex. Analysis, agencies are required to describe any significant alternatives considered in reaching the approach adopted.[12] Yet the Analysis asserts:

> The Commission is seeking comment on this rule, in part to consider its necessity and any alternatives. Because, however, the purpose of the proposed rule is to reduce the amount of high-cost universal service support received by competitive ETCs, it is not likely that a significant alternative could be chosen that would minimize the effect of the proposed rule if it is, in fact, adopted."

In other words, the Commission is prepared to adopt the proposed rule even if it fails to consider any significant alternative to minimize its effects on small entities. Yet the statute requires consideration of such alternatives. Even leaving intact the status quo, although it already injures CETCs that are small entities and rural area residents, would better serve

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[11] / 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS) (1,500 or fewer employees). The same size standard applies to wireline carriers; *see Reg. Flex. Analysis* ¶ 9 & n. 17, *citing* 13 C.F.R. § 121.201, NAICS code 517110.

[12] / Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law No. 104-121, Title II, 110 Stat. 857 (1996) ("*Regulatory Flexibility Act*").

consumers in rural areas than having basic service withdrawn at a faster pace during the years while they wait for broadband service to be brought to their expensive to serve areas.

The Reg. Flex Analysis also provides:

> Under certain circumstances, [the proposals] may have a significant economic impact on other competitive ETCs that are small entities. For example, as described in footnote 31 of the Order, the reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount.

The reduction in CETC support under the cap already has logically limited the effectiveness of companies in their efforts to meet the goals of the universal service provisions of the Act. The proposed changes would exacerbate this situation. The Analysis clearly states that the proposed rule is intended to reduce support to CETCs. This would hinder their ability to meet state-imposed coverage requirements. Moreover, to our knowledge, the still valid universal service aspects of the Telecommunications Act, and FCC policies promulgated thereunder, permit no such action.

Although the Regulatory Flexibility Act "directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted,"[13] the Reg. Flex. Analysis fails to estimate the number of small entities (CETCs, or more precisely, small business CETCs) that may be affected by the proposed rules and policies. Yet it describes CETCs as the entities that may be affected by the proposed rule and policies, and states that the purpose of the proposed rule is to reduce the universal service support received by such entities. In the Reg. Flex. Analysis, the Commission states:

> The NPRM proposes reducing the size of the interim cap on competitive ETC support when any competitive ETC relinquishes its ETC designation. ***Under certain circumstances, this may have a significant economic impact on other competitive ETCs that are small entities.*** For example, as described in footnote 31 of the Order, the

[13] / *See* Reg. Flex Analysis, at 2, *citing* 5 U.S.C. § 603(b)(3).

> reduction in size of a state interim cap amount could negatively affect a competitive ETC that is a small entity if another competitive ETC is later designated and receives a share of the smaller interim cap amount. ***While the designation of another competitive ETC would have an impact on the support received by the small entity even without the adoption of the proposed rule, the proposed rule could magnify that impact.*** The Commission is seeking comment on this rule, in part to consider its necessity and any alternatives. Because, however, ***the purpose of the proposed rule is to reduce the amount of high-cost universal service support received by competitive ETCs***, it is not likely that a significant alternative could be chosen that would minimize the effect of the proposed rule if it is, in fact, adopted.

Notice, at Appendix C, ¶ 30.

The "may" and "could" characterizations are inaccurate. The "significant economic impact" is not a possibility; it is a certainty. If the proposed rule is adopted, accordingly, and a CETC relinquishes its designation but that funding is not returned to the state pool, in most if not all states the proposal ***will*** "have a significant economic impact on other competitive ETCs that are small entities." This is because under the cap, per-line support to CETCs is diminishing over time, and the safety valve of relinquished support is necessary from time to time to restore the funds needed for adequate provision of service in accordance with service quality and coverage standards of carriers, and of the states that designate them as CETCs. We urge the Commission not to intentionally adopt this approach.

In most states, over time, all carriers, wireline and wireless, add lines. Populations grow; people purchase multiple means of communications. Under the cap, this addition of lines means less support is available per line over time – and in each state, at some point, and in some states perhaps already, the per-line support diminishes to the point where even supported service cannot be provided to high-cost areas, in light of the capped reimbursements for the costs of providing service – buildout construction, maintenance, customer care, and so on. Since the cap only applies to CETCs, consisting in large measure of wireless carriers and small businesses, the result is a disparate adverse impact upon providers of wireless services – the chosen technologies of more and more citizens - and small businesses, the entities whose competitive enterprise is encouraged in the Small Business Act.

In the *Notice,* the Commission stated that "the goal of the *Interim Cap Order* was to rein in high-cost universal service disbursements, and additional support would not necessarily result in future deployment of expanded service." But reining in high-cost disbursements need not be done at the expense of CETCs – providers of new and mobile technologies – and their customers. The Commission could return to its analysis of all components of high cost disbursements. We urge this Commission to consider how its rules could reduce unnecessary universal service funding and move toward broadband ***while*** including and supporting competitive deployments in the provision of universal service. Other aspects of the high cost system are likely to include reimbursement for costs not actually incurred. A full universal service overhaul, rather than merely curtailing competitive services, will better support citizens' need for the innovation, new technologies, and customer-tailored service plans of local and regional wireless companies. Moreover, it would continue to uphold the current universal service provisions of the Telecommunications Act, which, to our knowledge, remain in effect and valid law.

The Proposals Would Violate Section 254(b)(5) of the Act. Section 254(b)(5) of the Act requires that the Joint Board and the Commission base policies concerning universal service on principles including "specific, ***predictable and sufficient*** Federal and State mechanisms to ***preserve and advance*** universal service."[14] Moreover, the Act provides: "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and

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[14] / 47 U.S.C. 254(b)(5) (emphasis supplied).

sufficient to achieve the purposes of this section."[15] In addition, the Commission added a principle of "competitive neutrality" when implementing the provisions of the Act.[16]

Furthermore, in states such as Montana, keeping "additional" support (actually, relinquished support) within the state cap for CETCs would result in future deployment of expanded service, because CETCs need every ounce of support in order to meet the state regulation requiring CETCs to make available access to service to 98% of the population in the designated service areas.[17]

III. The Interim Cap Rule Should Not Be Amended So A State's Interim Cap Amount Would Be Adjusted If A Competitive ETC Serving The State Relinquishes Its ETC Status. In Addition, the Commission Should Not Make Permanent Any Waiver of Section 54.709(b) Or Otherwise Enable Itself to Direct USAC to Reserve Reclaimed Funds.

The NPRM states: "Reducing the total amount of support available to competitive ETCs in a state when a competitive ETC relinquishes its ETC status in that state will not reduce support flowing to any individual competitive ETC." Yet in fact, that **relinquished support is a necessary pressure valve to remedy the diminishing per-line support under the cap and the very real potential for contraction of rural wireless deployment as a result.** Under the cap, baseline support for each line diminishes naturally as a result of additional CETCs designated and customers added after imposition of the cap, and as a result of the natural increase over time of the costs of deploying service to a customer. Accordingly, on a real dollar value basis, CETCs are now receiving less funding per line than is actually needed to support service to that line. This results in a Catch-22 in jurisdictions that require CETC buildout. The natural economic

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15/ 47 U.S.C. 254(e) (emphasis supplied).

16/ *See* Federal-State Joint Bd. on Universal Serv., *Report and Order,* 7 Comm. Reg. (P & F) 109, 12 FCC Rcd 8776 (1997) (*Universal Service First R&O)*.

17/ *See* Montana Code Annotated § 38.5.3213.

effect of support contraction is to discourage and diminish provision to high-cost areas of competitive service, generally meaning wireless service, to the benefit of other providers and to the detriment of competitive carriers and their customers in rural areas. This contravenes the Commission's principle of competitive neutrality, which to our knowledge has not been eliminated from the fabric of FCC universal service policy.[18]

In light of the fact that the cap level was retroactively set with support levels adequate only to support CETC lines from several months earlier, the pool in many states is currently inadequate and is necessarily limiting the effectiveness of companies striving to meet the goals of the universal service provisions of the Act. In order for the pool to be restored to the point where it will adequately recompense the cost of extending service to persons in remote areas and maintaining that service, it is necessary for the pool be lifted to the correct level, i.e., to actually provide each CETC with something closer to the amount to which it would have been entitled *at the time the cap was imposed,* rather than March 2008 levels. Accordingly, at a minimum permitting use of relinquished funds within the pool to restore the cap level to the appropriate level of August, 2008 funding (that is, funding to support the high cost lines of CETCs that had

[18] / *See Universal Service First R&O*, 12 FCC Rcd at 8790 ("We adopt this principle and the principles enumerated by Congress in section 254(b) to preserve and advance universal service while promoting the pro-competitive goals of the 1996 Act. "). *See also id.* at 8801-02 ("(A]n explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and *necessary* to promote 'a precompetitive, de-regulatory national policy framework.'") (footnote omitted; emphasis supplied); at 8801 (universal service mechanisms and rules should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another."); at 8787 ("Over time, it will be necessary to adjust the universal service support system … so that the support mechanisms are sustainable, efficient, explicit, *and promote competitive entry."*) (emphasis supplied); at 8802 (under a competitively neutral regime, "[regulatory] disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers").

been designated prior to the time of the cap order's effective date – instead of funding only to the level of lines that were eligible as of March, 2008) - could restore some balance to the state pools.

IV. Sufficient CETC Funding is Needed to Meet State Requirements That CETCs Engage in Significant and Costly Buildout, to Serve the Valid Needs of Rural Citizens and Emergency Service Providers, Who Still Lack Even Basic Service In Some Areas, and to Maintain Infrastructure That Ultimately Will Be Needed for Broadband Deployment

In most areas, landline telephony is available in buildings near major roads. On the roads, and in fields and barns and forests, for mountain climbers and camping teenagers, for police officers and paramedics, a wireless carrier is the only carrier. The ability of wireless carriers, many of whom are CETCs, to provide service in rural markets has made a difference that saves lives. Contracting support to CETCs will diminish the rural reach of wireless and other competitive services.

MTPCS is subject to build-out rules in Montana that require a competitive carrier, within five years of its receipt of CETC status, to build its network coverage to reach 98% of the far-flung population of that geographically large, mountainous state.

Because support to CETCs was capped at March, 2008 levels, the cap in fact significantly contracted the amount of per-customer funding available to support competitive service in Montana.[19] In other words, the per-customer funding currently available in the state is far less than that originally designated for each CETC in the state, and makes it very difficult to continue

[19] / *See Hanson Testimony*, *supra* n. 5; *see also id.* at 1 ("As a cooperative, Nemont is committed to progressively expanding essential wireless telecommunications services to very rural, remote, and isolated portions of Montana. ***These are generally areas where large national or regional carriers have not invested in.*** A significant portion of our service territory is characterized by population densities of less than 2 persons per square mile.")

to support service to high cost area customers.[20] ***This Commission could help remedy that issue with its decisions in this proceeding, so Montanans will no longer suffer the results of the immediacy of the cap in that state.***

Failure to permit the "interim" cap to float to accommodate relinquished support, accordingly, would exacerbate the existing problem for the many residents of Montana who desire to receive service in remote areas. ***Saving funds for broadband, while an understandable goal, is hard to justify when many persons in fact remain unserved simply in their most basic communications needs. The fact that any carrier or competitor provides service to a portion of a market area does not entitle the makers of competition maps to designate the entire market area as served.*** Many areas of Montana remain unserved or seriously underserved. Not all residents of the state can be reached at their homes with copper wires, let alone DSL or cable. The terrain and weather conditions in much of the state are challenging. Often, wireless technology or other supported competitive technology is necessary simply in order to enable rural residents in the modern era to do their jobs, particularly agricultural, forestry and emergency work.

Many Americans have shifted to mobile service,[21] but many others cannot yet receive it, despite the utility of communications over the airwaves to ambulance drivers, ranchers, farmers,

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[20] / *See, e.g., J. Donohue & J. Baldridge, "Cutting the Cord: Landlines Dropping Landlines for Cell Phones,"* Montana Bus. Quarterly (Summer, 2008), available at *http://www.entrepreneur.com/tradejournals/article/183489955.html* ("Still, much of Montana remains without reliable cell service. Montana has a lot of rural miles to cover, said Bonnie Lorang, general manager of Montana Independent Telecommunications Association, and larger companies tend to follow the highways and urban centers. * * * Range [Telephone Cooperative] did build wireless towers in 2000 and operated them for two and a half years. Ultimately the venture proved too expensive. 'You have to invest millions of dollars for only 1,000 customers, which is why big companies like Verizon and Alltel don't do it,' Stephens said.")

and forestry workers, tribal residents of rural Indian reservations, and other residents of rural areas of the country.

It is costly to deploy and maintain any service to rural areas, and regular subscriber revenues alone, or any one-time cash infusion, are not sufficient to support the ongoing costs of leasing or buying land for cell sites, constructing and maintaining distant steel towers on icy rock, paying cell techs to use four-wheel drive all-terrain vehicles or snowmobiles to reach these towers in the middle of the night for maintenance, calibrations and repairs to the transmitter equipment housed thereon.

Yet the residents of Montana and Oklahoma, as well as other rural residents, contribute assets and hard work to the country and are worthy of receiving telecommunications service and more than a single carrier option. The effects of the cap, which shows no signs of being lifted, cannot be other than a hindrance to buildout of coverage and thus a detriment to the Congressional intent underlying the universal service provisions of the Telecommunications Act. These effects should not be exacerbated by adopting the proposed policies.

Moreover, the same infrastructure that is utilized for provision of essential voice and data services today will be needed for broadband tomorrow. These cell sites and network equipment must be maintained if broadband is to be overlaid and become a reality. We urge the

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[21] / In June, 1998, the country had more than 60 million reported wireless customers; 104.8 million households had wireline telephone service, out of a total of approximately 172 million switched local exchange lines. *See Trends in Telephone* Service, Industry Analysis Division, CCB, FCC, at Tables 2.1, 9.3, 17.1 (rel. February, 1999). A decade later, there were approximately 133 million traditional switched access lines in service and more than 260 million wireless subscribers. *See* News *Release, Second Local Competition Report* (September 3, 2010); *September 2010 Trends in Telephone Service*, Chart 11.1. ***Thus, with declining switched access lines and increasing wireless customers, it is not surprising that CETCs, increasingly more than RBOCs, became the companies needing universal service support to reach rural residents.*** These residents, along with much of the country, have been moving from landline to wireless service.

Commission not to extend its Verizon and Sprint decisions in the *Corr Wireless Order* to future actions regarding relinquishment of CETC funding.

V. Universal Service Among Wireless CETCs is Not Duplicative. Moreover, Wireless Carriers Contribute Disproportionately To The High-Cost Fund, Adding More Than They Receive In Support for Service; They Should Not Be Targeted for Support Reduction.

When a customer moves from one CETC to another, only the carrier that currently serves the customer is the CETC receiving support attributable to that customer. ***The CETC that previously served the customer, stops receiving support when the customer leaves.*** The support system for wireline incumbent carriers may work differently, with policy implications and support receipt for customer lines they no longer serve, and must be addressed with such carriers. A fair and portable support system, however, exists among CETCs.

While two CETCs may receive support in various portions of a state or market area served by a single wireline carrier, the support is not duplicative. It is provided to CETCs based upon the rural customers to whom the CETC provides service, thus incurring costs relating to those particular customers. ***Whether the service areas of two or three or four CETCs overlap is not relevant to the amount of support disbursed, because each CETC only receives support for the customers it serves.*** Thus, the primary effect of supporting multiple carriers in a single geographic area is not an increase in support – the only duplication of support is any extent to which an incumbent wireline carrier is still paid support for lines it lost to the competitive carriers – customers that it no longer serves.

Those who raise the spectre of an inappropriate identical support rule may be reminded that the support captured in current ILEC cost recovery rules does not acknowledge and therefore would not achieve recovery of certain wireless-network-only costs incurred by wireless carriers to reach their rural customers.

Wireless carriers contribute disproportionately to the high-cost fund, adding more than they receive; they should not be targeted for support reduction. In 2008, according to FCC facts and estimates, wireless carriers contributed 43.1% of total universal service contributions, but received only about 23.2% of high-cost fund disbursements.[22]/ Naturally, as U.S. citizens have moved from wireline to wireless service,[23] CETCs have served more customers in high cost areas and accordingly it is not surprising that they received an increasing – although still disproportionately low - share of universal service funding to support the increasing consumers of wireless service in high cost areas – consumers who were simply substituting wireless phones for landline phones, not purchasing multiple wireless carriers' services. Accordingly, it is clear that the increase in support to CETCs prior to the cap – an increase, again, that at most tracked their increasing customer numbers[24] – was not the source of the increasing high-cost fund levels.

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[22] / *See* Trends in Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at Table 19.18 (September 2010) ("*September 2010 Trends in Telephone Service")* (wireless carriers contributed 41.9% of USF contributions in 2008 (preliminary estimates in report) and are projected to contribute 43.1% of USF Contributions in 3Q 2009); Table 19.2 (wireless carriers received 23.2% of disbursements in 2008).

[23] / *See, e.g.,* the National Center for Health Statistics, S. J. Blumberg, Ph.D., and J. V. Luke, Div. of Health Interview Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July - December 2009,* available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm (During the second half of 2009, approximately one in four American homes (24.5%) had only wireless phones, and one in seven (14.9%) had a landline yet received all or almost all calls on wireless phones; this totals almost 40% of Americans who primarily use wireless phones)*; see also, e.g.,* Dan Frommer,*"Chart of the Day: Almost a Third of U.S. Families Have Cut the Landline Cord,"* http://www.businessinsider.com/chart-of-the-day-almost-a-third-of-us-households-have-cut-the-landline-cord-2010-8 (regarding Citi Investment Research Report on disconnection of landline phones – "That's bad news for the big U.S. telcos like AT&T and Verizon, but it's also positive for the big U.S. wireless companies, like... AT&T and Verizon."); *see also* trends in wireline and wireless subscribership numbers noted at n. 21, *supra.*

[24] / *See September 2010 Trends in Telephone Service,* at Table 19.5 (as the nation moved to wireless service, CETCs received support for service to those increasing numbers of rural customers, ultimately consisting of approximately 30% of high cost support – but again,

As Time Warner Cable noted in recent comments, "the contribution factor not only continued to rise in the wake of the CETC cap but reached record levels (above a staggering 15 percent) before a recent dip. It appears that the primary effect of the CETC cap has been to widen the disparity between the funding awarded to incumbents and to competitors."[25] This is not to point the finger at any particular group, but instead, to note that the cap has failed of its essential purpose, so magnifying the cap will not benefit the public. The universal service system has many aspects that should be reexamined. Tightening a cap that is reducing funding to competitive carriers alone would simply exacerbate the casualties, as CETC service and infrastructure is withdrawn or rolled out more slowly to citizens who live in high cost areas, even when those citizens receive no other telecommunications service. The trends in the contribution factor and total high cost disbursements demonstrate that the cap has failed to solve the problem it was allegedly designed to address – rising contribution factors. Accordingly, the Commission

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this is not duplicative funding to CETCs, because competitive carriers only receive support for the actual customers served, not for customers they no longer serve.

The same source shows that, despite losing some customers to CETCs, other fund recipients received increasing amounts of high cost support over those same years – from 1996 to 2008, trebling from $1.1 billion to approximately $3.1 billion). With the proliferation of new communications technologies, the question is whether current sources of contributions and recipients of distributions are an accurate assessment of the full array of appropriate technologies.

[25] / Comments of Time Warner Cable Inc., WC Docket No.s 10-90, 05-337, GN Docket No. 09-51, at 7, http://docs.google.com/viewer?a=v&q=cache:c3-wXt47RXUJ:https://prodnet.www.neca.org/publicationsdocs/wwpdf/71210twc.pdf+CETC+cap+deployment&hl=en&gl=us&pid=bl&srcid=ADGEESg0H6ZsxdTgN-DbSD4E2x6UDvTfIepWTaCrbJ4YsjF4483QRGu3huC5RVv1vl8jFs-oyWGrNQq9cEGb9OP-jmRu_0XUyOzguNNe4NXYDVsPh_Kgxg2LXylhClA6ZI_eRk-2k-vZ&sig=AHIEtbR3nM5h5wajJXyxOBiGr9Q94RKeRQ (first footnote provided: "Public Notice, Proposed Second Quarter 2010 Universal Service Contribution Factor, CC Docket No. 96-45, DA 10-427 (rel. Mar. 12, 2010) (proposing contribution factor of 15.3 percent); Public Notice, Proposed Third Quarter 2010 Universal Service Contribution Factor, CC Docket No. 96-45, DA 10-1055 (rel. June 10, 2010) (proposing contribution factor of 13.6 percent).") (Second footnote omitted.)

should not permit USAC to worsen the effects of the cap by further paring away at support to technologies that not only contribute more to the entire USF than they receive in support, but also have proven not to be the source of the contribution factor increase.

The Commission should facilitate the buildout and maintenance of competitive service to rural residents, rather than intentionally discouraging such service by reducing the support that enables its provision.

VI. Conclusion.

For the foregoing reasons, MTPCS urges the Commission to act immediately to relieve the pressure on CETCs of increasing high-cost demands for decreasing per-customer amounts of funding, combined with state-required buildout requirements. Rural citizens deserve competitive coverage, and they deserve mobile coverage, for public safety reasons, among others. In some cases, residents still have no access to communications; a single provider touching one small part of a county or market area should not entitle mapmakers to color the whole area "served," nor should two providers serving – and receiving support solely in an amount for – two different customers in a county, entitle policymakers to think of that county as containing two "duplicative" recipients of universal service. That's not how support to CETCs works. Each carrier can only receive an amount to support coverage to each individual customer they are serving. CETC support is portable, not a "cost-plus" system.

The Commission should not amend the interim cap rule to permit adjustment of a state's interim cap amount if a CETC serving that state relinquishes its ETC status. Nor should the Commission permit such adjustment even without a rule amendment. Furthermore, the Commission should not make permanent any waiver of Section 54.709(b) or otherwise enable itself to direct USAC to reserve reclaimed funds.

The natural addition of lines, as more ETCs are designated and more rural customers seek to subscribe to competitive services, is reducing the per-customer amount of support to CETCs received under the cap. Continuing to chip away at funding to CETCs, as the proposed changes would do, would pull even basic, nonbroadband services out from under rural residents, in contravention of the "sufficiency" of universal service support required by the Act. The continued diminution of the fund for CETCs, we believe, inevitably will result in, or may already have resulted in, rollback of rural competitive service, diminishing the infrastructure necessary to support broadband in future years, to the detriment of competitive and technology neutrality, and to the great disservice of the public in the rural, insular, and high cost areas described in Section 254 of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 7, 2010, I caused a true and correct copy of the foregoing Comments to be served by electronic mail on the following:

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